



Political Philosophy

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Rejoinder to Todea on The 'Open' Contract of Immigration

Abstract

Todea (2011) is an attempt to mediate between the views on immigration of Block and Hoppe. The former stands for completely open borders, the latter for highly regulated ones. Todea's contribution is an open contract between the immigrant and those residing in the host country. It is the claim of the present author that she makes an important contribution to this debate, but, ultimately, cannot bridge the gap between the positions of these two libertarians.

Keywords: Immigration, Hans Hoppe, Walter Block, libertarianism

Todea (2011) is a valiant attempt to mediate between Hoppe (1998, 2002), which urge a restricted immigration policy and Block (1998), Block and Callahan, (2003), which defend the open borders position. She offers as a compromise an open contract of immigration: the would-be immigrant may not enter the host country unless there is at least one member of that community who is willing to sponsor him, either as a free gift or for a fee.

Todea (2011) arrives at her suggestion not by adding up the Block and Hoppe stances and dividing the resulting sum by two, which would be an unprincipled compromise.¹ Rather, in her view, her position stems from basic libertarian premises of private property rights.

I am very open to this sort of attempt.² Nonetheless, I cannot agree that Todea has fully succeeded in her estimable quest. I regard the Hoppe and Block positions on immigration as logically incompatible, not open to even a principled compromise, as offered by Todea. While both of them may possibly be in error, only one of them can be correct in his analysis of immigration policy, according

to libertarian law. However, she does succeed in addressing at least one important issue.

Hoppe makes a very valid point when he distinguishes between the free movement of goods, capital, and labor. In the first two cases, the interaction cannot occur unless there are (at least) two willing partners. This would encompass a buyer and seller in the first case, and an investor and investee in the second. In the third case in sharp contrast, the immigrant shows up at the property of the host country without any by-your-leave at all of anyone in the recipient nation. He is entirely on his own in this regard. Todea (2011) addresses this point to perfection in her open immigration contract. With the benefit of this insight of hers, all three are now on a par with each other: the free movement of goods, capital, and now, as well, labor.

Wherein does she fail? There are three types of property onto which the immigrant may possibly be directed, and/or occupy. They are as follows: Purely private property (houses, factories); totally unowned territory (vast tracts of never occupied land in Alaska, Nevada); and common or "public" property (roads, parks, government buildings, territory administered by the Bureau of Land Management).

With regard to the first of these, there is no need for Todea's contract.³ We already have such institutional arrangements in operation: rent or

¹ One not defensible on its own terms; only as a half way point between two other perspectives. Suppose A says that $2+2=4$; B claims that $2+2=6$. An unprincipled compromise that merely sought a midpoint between these two would aver that $2+2=5$.

² Indeed, one of the disputants to the present debate over immigration takes much the same principled compromise position on another contentious issue: abortion. See on this Block and Whitehead, 2005. And, I greatly admire Garrison (1982) for another mediation attempt, also in a very different context.

³ And, Hoppe is entirely in the right in his analysis in this realm: any occupation of such amenities without the owner's permission would indeed be a trespass.

purchase from their present owners. As to the third of these, there is no possibility of any contract, for there is no legitimate owner, at least not in libertarian theory, which predicates such rights on homesteading.⁴ Yes, the government may claim property rights there, but this is an untenable position for libertarians, a philosophy embraced by all discussants in this case, Hoppe, Todea and Block, since the state never “mixed its labor” with the land in question. So far Todea is batting zero for two.

What about the second of these three categories, that immigrants may settle on or occupy common or public property? Here, Hoppe and Block diverge, and Todea appears to agree with neither. In Hoppe’s view, as I understand it, this territory is properly owned by all the citizens or residents of the area, in proportion to the amount of tax revenue mulcted from them that went into the building of these amenities. Thus, the implication is that a Todean contract with the immigrant would have to be signed not by any one private property right owner, but by *all* of them.⁵

However, these domains are now owned by what is in effect a robber gang,⁶ government, and their property is therefore a fair target for takeover by anyone, immigrant or resident it matters not one whit. Todea takes an entirely different position on this matter: that if the immigrant signs a contract with any one citizen, he may have proper access to all these areas; but not to settle on them, only to use them as at present. Namely, the immigrant may ride on the roads, use the public parks like anyone else, but certainly not pitch a tent in any of these places, and claim the area as his own private property. It is difficult to see how this can constitute a melioration between the positions of Block and Hoppe.

Are Hoppe and Block passing each other like ships in the night, not really achieving real disagreement? The former maintains that public property is rightfully owned by the citizenry and the latter concurs. It is likely that Hoppe would agree with Block that these areas are now controlled by, and therefore actually owned by what Rothbard has characterized as “criminal gangs.” So, perhaps, there is no real disagreement between the two? No. When it comes to actual immigration laws, Block favors open borders⁷ while Hoppe supports very restrictive policies.

There are some other flaws in Todea (2011). She (2011, 67) accepts the Lockean proviso, that

homesteading may only properly occur when the settlers are “leaving enough and as good for others.” But if this is true, then the libertarian goal of every square inch of the earth’s surface being transformed into private ownership⁸ cannot be attained. For, as more and more land become homesteaded, eventually, long before it is all privatized, there will not be left “enough and as good for others.” And why should anyone be precluded from homesteading virgin land just because there will not be “enough and as good for others”? We are vouchsafed no overwhelming reason for this bit of compulsory egalitarianism (Rothbard, 1971; Nozick, 1974).

Todea (2011, 68) also approves of the fact that “whoever breaks a law of abuses the private property of an individual will be punished according the local laws and can be made subject to retribution.” But suppose the “local laws” are unjust, that is, incompatible with libertarian law (Benson, 1990; Long, 1998; Rothbard, 1982; Stringham, 1999, 2007). Should not the latter prevail vis a vis the former? As well, Todea (2011) places great importance, or at least legitimacy on “citizenship.” But in the anarcho capitalist world of libertarianism, there would be no such thing. Rather people would be clients of the various defense, insurance and adjudication agencies (Tinsley, 1998-1999; Hoppe, 2006, 2008; Long, 2004; Murphy, 2005; Rothbard, 1982).

Let me end on a positive note, because I appreciate Todea’s (2011) Herculean efforts in an attempt to resolve this issue, which has bedeviled libertarians for lo these many years. She (2011, 68) very properly rejects “immigration rights.” There is no such thing. If the property the immigrant wants to occupy is already privately owned, that is trespass. If it is unowned, or publicly “owned,” then *anyone* may properly seize control of it, immigrant or resident. She also quite reasonably rebuffs the notion that those who invite immigrants onto their private property are henceforth responsible for them.⁹ Parents are not responsible for their (adult) children, otherwise we would be able to charge the mothers and fathers of Hitler, Mao, Stalin and other socialists with crimes. Landlords are not accountable for their tenants, and those who host immigrants cannot properly be liable for their crimes and/or debts. I give two cheers for Todea (2011).

⁴ See on this Block, 1990, 2002A, 2002B; Block and Yeatts, 1999-2000; Block vs Epstein, 2005; Hoppe, 1993; Kinsella, 2003, 2006; Locke, 1948; Paul, 1987; Rothbard, 1973, 32; Rozeff, 2005

⁵ Or perhaps by their (political?) representatives.

⁶ See on this Chodorov, 1962; Rothbard, 1982, 2012; Spooner, 1870

⁷ If residents are afraid of being overrun by masses of immigrants, they have an option according to this view: privatize everything, each and every square in of the territory, in which case immigration without the owner’s permission does indeed become trespass.

⁸ Except for sub marginal territory, of course.

⁹ Here, Todea takes the side of Block versus Hoppe.

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